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In re Application of	:	
Smith, et al.	:	
Application No. 10/759,130	:	ON PETITION
Filed: January 20, 2004	:	
Attorney Docket No. 117622-00105	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed July 1, 2008.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was held abandoned due to failure to timely file a reply to the Notice of Allowance, mailed February 21, 2008. This Notice set a statutory period of three months for issue fee transmittal. No issue fee having been received, the application became abandoned on May 22, 2008. The Office mailed a Notice of Abandonment on June 16, 2008.

To establish nonreceipt of an Office action, a petitioner must:

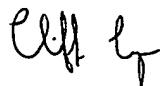
- 1) include a statement that the Office action was not received;
- 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
- 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and

docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

With the instant petition, petitioner has submitted a copy of a proper master docket report, showing all of his replies docketed for the due date of May 21, 2008. An entry for the instant application is absent, supporting the conclusion that the Notice of Allowance was not received. In addition, petitioner has stated that the Notice was not received, and attested to the fact that he searched the file jacket and docket records.

The matter is being forwarded to Group Art Unit 3735 for re-mailing of the Notice of Allowance, setting a new period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

¹ See MPEP 711.03(c)(II).

² MPEP 711.03(c)(II) (emphasis added).

³ Id.